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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/832,709

04/11/2001

Karla E. Williams

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1658

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

01/16/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/832,709

Applicant(s)

WILLIAMS ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,20-23,26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,20-23,26,27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 11/6/07 have been fully considered and are not persuasive.

Applicant repeats the argument that the present application provides data showing that odor-absorbing efficacy for glycerin is not a simple linear relationship. Applicant again references Figure 2 and page 18, line 3 to page 19, line 2 of the specification for support of the claimed ranges. However, the referenced passage provides support for as little as 0.01 grams, but does not provide support for the upper limit of 0.5 grams as recited in claim 6. Figure 2 shows the upper limit is 0.12 grams. Applicant argues the recited amounts are more than simply determining an optimum value from within a previously disclosed range as Petrus does not disclose any data showing the correlation of any particular amounts of pectin (or of any deodorant material) with its efficacy in absorbing odors. While Petrus does not disclose a specific amount of the additive, it does disclose the additive is present. Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. The examiner maintains that one having ordinary skill in the art would be able to determine through routine experimentation the amount of additive necessary for achieving optimal odor removal.

Applicant argues Petrus does not disclose a fibrous tampon. This deficiency is addressed in the rejection below. Applicant further argues Petrus teaches away from the function of absorbing body fluids. Applicant references col. 4, lines 7-24 of Petrus to support this position. However, the recited portion of Petrus teaches a barrier of the body cavity and protection of movement against sperm or STDs. Petrus further teaches the lubricant is removed during insertion. In the same manner that the solution is released into the body cavity, any body fluids present in the body cavity are capable of being absorbed by the tampon.

As to claim 20, Applicant argues the glycerin substance of Petrus is on the outer region of the tampon and not disposed within the fibrous material of the tampon as recited by claim 20. The claim requires the glycerin is disposed within the fibrous material. Petrus discloses the glycerin on the outer *region* of the tampon. The material used to make the tampon is in the outer region and the inner region. Thus, the glycerin in the outer region still meets the claim limitations as the glycerin is disposed within the material in the outer region.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3, 5-7, 20-23, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petrus et al. USPN 5417224. Petrus discloses a tampon having glycerin and pectin as a malodor counteractant material (col. 6, lines 37-52). Petrus discloses a foam tampon as opposed to the claimed fibrous tampon. It would have been an obvious matter of design choice to use a fibrous tampon instead of a foam tampon, since applicant has not disclosed that using a fibrous tampon solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a foam tampon.

Petrus discloses the glycerin as a lubricant, however it is additionally capable of absorbing odors as taught in Yabrov (col. 4, lines 41-43). Additionally it is old and well known that glycerin and pectin are natural substances. Petrus is silent on the amount of counteractant material present in the absorbent. However, Petrus discloses a malodor

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counteractant in a tampon (col. 6, lines 37-52). One having ordinary skill in the art would be able to determine through routine experimentation the amount of counteractant material necessary for a particular end product. Moreover, discovering optimum values only involves routine skill in the art, *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

As to claim 20, Petrus discloses a tampon having glycerin and pectin as a malodor counteractant material (col. 6, lines 37-52) and a fibrous material for absorbing body fluids (col. 4, lines 40-50 and col. 5, lines 29-35).

As to claim 26, Petrus discloses a method of applying a tampon having glycerin and pectin as a malodor counteractant material (col. 6, lines 37-52; col. 7, lines 25-54). The material used to make the tampon is in the outer layer and the inner layer. The glycerin is disposed within the material in the outer layer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

January 7, 2008